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Final report and recommendations of the subregional seminar on information and awareness-raising with regard to the International Criminal Court, held in Yaoundé from 13 to 15 February 2001

Organized by the Government of Cameroon in collaboration with Canada, France, the Agence intergouvernementale de la francophonie and De Paul University (United States of America)

1. An important subregional seminar on information and awareness-raising with regard to the International Criminal Court was held at the Palais des Congrès in Yaoundé, Cameroon, from 13 to 15 February 2001 on the theme "The countries of the Economic Community of West African States and the International Criminal Court: issues and prospects".

2. The seminar was organized by the Government of Cameroon with technical and logistical support from the following partners:

(a) The French Ministries of Foreign Affairs and Justice;

(b) The Agence intergouvernementale de la francophonie;

(c) The Canadian technical assistance programme for the International Criminal Court.

3. Participants in the seminar came from 9 of the 11 countries of the subregion: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tomé and Principe. They were, for the most part, senior officials from the legislative, judicial and executive branches of those countries.

4. They also included lawyers, media professionals and other representatives of civil society, including non-governmental organizations and associations involved in the defence of human rights.

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5. Discussions were led by high-level experts from the countries of the subregion and also from Belgium, Canada, France, the United States of America, the Agence intergouvernementale de la francophonie and the International Criminal Tribunal for Rwanda.

6. The seminar opened on the morning of 13 February with a solemn ceremony.

7. This ceremony was attended by the President of the Supreme Court of the Republic of Cameroon, the Procurator General at that Court, the first Vice Chairman of the National Assembly, members of the Government, members of the diplomatic corps accredited to Yaoundé and the Governor of Centre province.

8. The guests and participants heard:

(a) a welcome speech by Mr. Jean-Pierre Soh, Chairman of the ad hoc technical committee for the implementation of the International Criminal Court;

(b) a special message from the Secretary-General of the United Nations, Mr. Kofi Annan, to the participants;

(c) a statement from the Minister of Justice read by his representative Mr. Joseph Nomo Awono, Secretary-General of the Ministry of Justice; and

(d) an opening speech delivered by Mr. Joseph Dion Ngute, Minister responsible for Foreign and Commonwealth Affairs.

9. The bureau was elected by consensus and was made up of the following:

1. Chairman: Mr. Martin Belinga Eboutou, Ambassador and Permanent Representative of Cameroon to the United Nations in New York;

2. First Vice Chairman: Mr. Nicolas Tiangaye (Central African Republic);

3. Second Vice Chairman: Mrs. Clémence Rwamo (Burundi);

4. Third Vice Chairman: Mr. J. B. Moussavou Moussavou (Gabon);

5. Rapporteur: Mr. Adolphe Minkoa She (Cameroon);

6. Secretary: Mr. Alphonse Seba Zongu (Rwanda).

10. The work was done entirely in plenary so as to enable participants to follow all the themes on the programme.

11. At the first meeting, which was devoted to a general introduction to the International Criminal Court, Mr. Alexandre Morin gave a talk on how the Court operates and Professor Adolphe Minkoa She gave an opening lecture entitled "The International Criminal Court: genesis, issues and prospects". This threw light on the ponderous and difficult process leading up to the adoption of the Statute of the International Criminal Court, which Mr. Kofi Annan, Secretary-General of the United Nations, termed a veritable leap forward. It was emphasized that the International Criminal Court is an instrument that can be used to combat the impunity that surrounds the crimes that are most prejudicial to the essence of humanity; it also is intended to be an instrument for peace, insofar as international criminal justice makes it possible "in fine" to overcome hatred and to bring calm to places where the greatest atrocities have been committed.

12. However, although the creation of the International Criminal Court is a great step forward for humanity, it is nonetheless true that, in order for the Court to

become in reality an effective instrument for combating impunity, States must meet the requirement of 60 ratifications set in article 126 of the Statute, in order for the Statute to enter into force. Furthermore, they will have to adjust their national legislation in such a way as to be able to effectively meet their two basic obligations: complementarity and full and complete cooperation.

13. Following the general introductory meeting, participants considered the six themes on the programme one after the other; for each one there was a general introduction, statements, followed by a discussion.

1. The first theme, "The International Criminal Court and human rights", was introduced by Professor Eric David. It was demonstrated that the Court has a dual role: on the one hand it is the guardian of human rights and at the same time it is itself required to respect human rights when meting out justice.

As regards the former, the International Criminal Court echoes article 2, paragraph 3, of the International Covenant on Civil and Political Rights which requires each State to safeguard human rights; is not making sure that the gravest violations of human rights are prosecuted and punished by the criminal justice system the best way of protecting human rights?

As regards the latter, the Court is required to respect the general principles of criminal law and the requirements of a fair trial. However, while there is cause to rejoice at this, we must put a damper on this favourable assessment because of some provisions of the Statute, such as article 16, which establishes the right of the Security Council to obstruct the prosecutor's action, and article 31, paragraph 1 (c), which includes self defence as one of the grounds for exemption from criminal responsibility.

2. The second theme, "Identification of problems posed by the ratification of the Statute of the International Criminal Tribunal", was introduced by Mr. Gilbert Bitti. In the light of the experience of France and Canada, participants focused their thoughts on the constitutional problems that ratifying the Rome Statute may pose.

In this connection, it is generally agreed that it will be necessary to approve constitutional amendments if any provision of the Statute conflicts with those of the Constitution. That would be true, inter alia, of article 27 concerning the "irrelevance of official capacity" which conflicts with the constitutional affirmation regarding the immunity of the head of State and other government officials.

3. The third theme, "The crime of aggression in the Statute of the International Criminal Court", was introduced by Mr. Jean Dieudonné Ntsama. Here the exercise was to help participants better determine the contours of this important and recurrent issue, namely, the crime of aggression. The plan adopted to that end was, following the general theme of the seminar, to deal with the issues of the crime of aggression and its prospects one after the other.

Three issues were identified. The first concerning the definition of the crime of aggression, brought together several conceptions, one of which was narrow and reduced aggression to the war of aggression, based on the

Nuremberg precedent, and one of which was broad, based on General Assembly resolution 3314 (XXIX) of 14 December 1974.

The second issue, concerning proceedings, raised the question of the link between the competence of the Security Council and that of the International Criminal Court, the former being competent to determine the existence of an act of aggression, pursuant to Article 39 of the Charter of the United Nations, while the latter is competent to determine the existence of a crime of aggression, it being understood that determining the existence of a crime of aggression presupposes determining the existence of an act of aggression. This question, which leads to the question of the independence of the Court, revealed strong opposition between the five permanent members of the Security Council, jealous of the Council's prerogatives, and the non-aligned countries, who did not wish to see the Court's exercise of its competence paralysed by the absence of a decision from the Security Council.

The third issue, which was political in nature, recalled the influence of the geopolitical background to the debate on the crime of aggression and brought up the situation in the Middle East.

The prospects can be viewed both in the short term and in the long term.

In the short term, there is reason to rejoice at the preparation of a consolidated text of the many proposals that have been circulating since 1997.

In the long term, there is reason to bear in mind article 123 of the Statute which states that "Seven years after the entry into force of this Statute, the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5".

In other words as regards the crime of aggression, we will have to be patient.

4. The fourth theme, "The adaptation of national legislation to the Statute of the International Criminal Court", was introduced by Mrs. Patricia Dunberry.

The issue here is respect of States parties to the Rome Statute for the dual obligation of complementarity and full and complete cooperation.

The principle of complementarity, which is set forth in the preamble and is stated in articles 1 and 17 of the Rome Statute, means that it is first and foremost the responsibility of States to bring to court persons accused of crimes which are within the jurisdiction of the International Criminal Court. In order to remain consistent with this principle, on which the adoption of the Rome Statute broadly depended, States will have to adopt, and then apply at the national level, legislation establishing that the crimes which are within the jurisdiction of the International Criminal Court are also crimes under national law, no matter where they have been committed and regardless of the identity of the perpetrators or the victims.

Similarly, States will have to take national legislative measures to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the court."

From the experiences of Canada and France and from the discussions begun in Cameroon and Belgium, it emerged that national amending legislation may concern not only criminal law, in the broad sense, but also other areas, such as nationality law.

5. The fifth theme relates to the role of the media in raising awareness and providing information on the Court. The general introduction was given by Ms. Bernadette Batakaliza.

There appears to be a serious shortage of information on the Court in both printed and audio-visual media in the subregion. After reaffirming that the media had a major role to play in that area, the participants structured their discussion around two considerations: the identification of target groups, on the one hand, and the elaboration of strategies, on the other.

Two target groups were identified: decision makers, who must be persuaded to begin the ratification process, and public opinion, which, if made aware of the importance of the International Criminal Court, will put pressure on the decision makers with a view to ratification.

With respect to the strategies to be used to enhance understanding of what the Court is and to spread the message, the participants considered that the journalists concerned should take a dual approach: a collective one, which could involve setting up networks, and an individual one involving training and information, particularly from experts.

In any event, the processing of information relating to the Court should be systematized.

The sixth and final theme relates to the role of civil society in setting up the International Criminal Court. The introduction was given by Ms. Sume Epie Eyoh.

Civil society, particularly through its non-governmental organizations component, has been significantly and constantly involved in the process of setting up an International Criminal Court. At first, this involvement took the form of active participation in the elaboration and adoption of the Statute through a vast lobbying campaign. It has continued in the Preparatory Commission, in which the views of non-governmental organizations have prevailed in relation to the definition of both the Elements of Crimes and the Rules of Procedure and Evidence.

Since the adoption of the Statute of the Court, non-governmental organizations have also been active in the area of ratification.

The role of these organizations is multiple, since they act both as pressure groups and as an interface between decision makers and public opinion. Non-governmental organizations and other organizations of civil society should also become involved in raising the awareness of the media with a view to promoting a culture of peace and tolerance among the population.

While African civil societies have not been absent from the process of setting up the Court, they should become more involved in the campaign for ratification.

Appropriate actions should therefore be taken; to this end, two important resolutions were adopted, one on the establishment of a subregional network to centralize the actions of national civil societies, and the other on the establishment of a working group.

14. In addition to considering the topics on the agenda, the seminar participants heard a presentation on the functioning of the International Criminal Tribunal for Rwanda and on the results achieved to date.

15. Lastly, it should be noted that, apart from the seminar itself, two forums were held, one on the role of the media and the other on the role of civil society.

Annex

Recommendations of the subregional seminar on information and awareness-raising with regard to the International Criminal Court

Yaoundé, Cameroon

13-15 February 2001

The participants in the subregional seminar on information and awareness-raising with regard to the International Criminal Court, held in Yaoundé from 13 to 15 February 2001,

Aware of the efforts undertaken by the international community to punish the most serious crimes, such as the crime of genocide, crimes against humanity, war crimes and the crime of aggression,

Convinced that the establishment of an effective international criminal justice system to complement national criminal jurisdictions will help to maintain international peace and security and to ensure respect for human rights,

Aware of the implications of the Statute of the International Criminal Court for the domestic laws of our respective countries,

Considering that the Statute of the International Criminal Court was adopted in Rome on 17 July 1998 after 120 States voted in its favour,

Considering that, to date, this Statute has been ratified by 28 States, of which only one (Gabon) belongs to the Economic Community of Central African States,

Considering that civil society and the media should play a primary role both in information and awareness-raising with regard to the International Criminal Court and in the development of a culture of peace and tolerance among the population,

Recommend that the States members of the Economic Community of Central African States ratify the Rome Statute of the International Criminal Court as soon as possible;

Call upon these States to bring their national laws into line with the obligations contained in the Statute of the International Criminal Court;

Request the heads of State of the countries members of the Central African Economic and Monetary Community and the Economic Community of Central African States to include the issue of ratification of the Rome Statute of the International Criminal Court in the agendas of their forthcoming meetings;

Call upon the media and civil society to carry out awareness-raising and information campaigns to speed up the ratification procedures;

Announce and welcome the establishment, at this seminar, of a subregional network to centralize the actions of national civil societies and of a national non-governmental organizations' network to support the ad hoc technical committee and the regional network;

Request Gabon to host a follow-up seminar in one year.